

CA20N
Z 1
-66A22

BRIEF ON
THE ONTARIO WORKMEN'S COMPENSATION ACT
SUBMITTED TO
THE HONOURABLE, MR. JUSTICE GEORGE A. MCGILLIVRAY
by
ONTARIO MINING ASSOCIATION

August 16, 1966

The Ontario Mining Association was incorporated under Provincial Charter in 1920. It is a trade association that, through its members, represents the views of virtually all of the producing mines and the larger quarries in Ontario. The membership is sixty-five companies, employing a total of 41,000 persons.

The order of dealing with the various items is related to their sequence in the Act and is not indicative of their degree of importance. In some cases we can only indicate that an unfavourable or an impractical situation appears to exist for which we are, for the time being, unable to suggest a solution. References made to the "Act" relate to the Workmen's Compensation Act and Regulations of the Board as amended to May 1965.

This submission will make reference to the following matters:

Interpretation

Compensation:

- i) Waiting Period
- ii) Rate of Compensation
- iii) Retroactive Liability

The Workmen's Compensation Board

Legislation and Regulations

Safety Associations

Appeal Procedure.

Interpretation

The introduction of Clause (a)(iii) to Section 1(1) so that it reads:

"In this Act, 'accident' includes, disablement arising out of and in the course of employment"



Digitized by the Internet Archive
in 2025 with funding from
University of Toronto

<https://archive.org/details/31761119693976>

has so changed the definition of an accident which, when coupled with requirements for giving notice of the occurrence of an accident, as provided in Section 21(1) and (5), creates a basis for making awards for disablement that does not necessarily relate only to an on-the-job incident.

The Association is not suggesting the deletion of either of these sections but it does maintain that industry should not be put in a position where it becomes liable for the effect on a person of normal, daily off-the-job activities that have equal casual relationship to the incident as do the similar kind of activities which occur on-the-job.

In cases where there is such scope for causal consideration we maintain that greater emphasis should be placed on relating the accident to conditions or activities unique to the work situation, and on reporting of the detail of the accident before leaving the place of employment.

Compensation

In his report on the Workmen's Compensation Act, dated May 31, 1950, the Honourable Mr. Justice Roach dealt with a number of the aspects of the subject concerning the determination and payment of suitable compensation. There seems to be little point in either quoting or paraphrasing his excellent observations on all these matters but the Association wishes to record its views on the following points:

1. Waiting Period

The Honourable Mr. Justice Roach concluded that the waiting period should be four working days. The Act now provides that the waiting period be three calendar days.

Since a three-day waiting period appears to be a reasonable compromise in balancing administrative cost considerations with reduction in income earning ability, and that this latter factor is related to opportunity to earn, it would seem that waiting period should logically be related to loss of work time.

For this reason we maintain that the waiting period should be defined as those three days on which the claimant was scheduled to work. With the wide-spread adoption of the five-day work week the use of calendar days is not an equitable criterion and will be less so in the event that the work week may become less than five days.

2. Rate of Compensation

The rate of compensation in Ontario is 75% of average earnings up to a limit of \$6000 per year. In view of the facts that compensation payments are not subject to income tax and that a workman's normal everyday expenses, such as transportation, wear and tear on work clothes, and payroll related charges are eliminated during this time of disablement, the present rate adequately preserves the living standard of persons and families in these income brackets. We contend, therefore, that this percentage is ample.

There is a marked tendency to regard the payments of compensation as an alternate form of unemployment insurance, charity, long service or old age retirement plan. We do not suggest that this view is necessarily held by those who administer the Act, but we contend that it is a view held by the public at large, by some Municipal Councils, by many doctors, and even by some employers and members of the Legislative Assembly. The view is equally prevalent that the source of funds is the Government and that it is public money. We suggest to you that these views conspire to colour evidence to the degree that some compensation awards now put the recipient in the position that he can net as much by not working as by working. As a result there is no incentive to become rehabilitated or to resume self-supporting work; in other cases it becomes a bonus because earning ability, in fact, has not been impaired.

The fundamental purpose of the Act is to compensate an injured workman for loss of earning power brought about by an on-the-job accident. When

such injured workman returns to his work and has regained full earnings and/or earning ability, compensation for the loss of earning power should be terminated.

Since the last Commission reviewed the Act, there have been radical changes at both the Federal and Provincial levels on the concept of universal social benefits involving old age pensions, government sponsored pension plans, compulsory vesting of private pensions, etc., all of which have been good and effective, and with which we agree. It is our belief that this progressive approach should be recognized in its complementary effect on compensation awards and their purpose.

3. Retroactive Liability

The Association appreciates that benefits received under the Act must be adjusted from time to time in order to serve the purpose for which their payment was designed, and the Act has been so amended on a number of occasions. These changes not only affect present charges to the employer but have also been applied retroactively to upgrade the scale of payments in respect to past accidents. In many instances the employer, against whom the past accident was assessed, has ceased to exist, so that the liability has had to be borne by other employers.

We do not suggest that such increases should not be made; however, we do subscribe to the view expressed by the Honourable Mr. Justice Roach, that this is an adjustment for social purposes. Changes in awards for past accidents are of this type and their increased cost should be provided for by the public at large through the Consolidated Revenue Fund of the Province to which all, including the employers, contribute.

The Workmen's Compensation Board

The powers and jurisdiction of the Board, as set out in Section 65 and 72 of the Act, confer on it great authority. The detail as to the duties, the conditions of appointment and the qualification as to prejudicial financial interest of the Board members are also set out in the Act. By implication and by tone of the wording throughout the Act, the Board members are expected to be the persons they are, men of ability and independence of judgment. Since their function must be judicial, it follows that the Board should be non-partisan and its decisions should be free from the influences of prejudice or partiality.

Alternately, if the Board is to represent partisan views and be subject to outside influence of interested parties and of political pressures, qualification for appointment should be reconsidered when replacements to the Board are to be named.

This Association favours the former type of Board but it appreciates that political pressure may create the latter.

In the non-partisan type of Board we would suggest that there be three voting members of the Board, of which two would constitute a quorum; that these members be persons of proven ability, with judicial experience or training and free from partiality and direct or indirect interest. We also recommend that a medical expert be a non-voting member of the Board to act in an advisory capacity.

If the partisan type Board is to be considered, we suggest that it be constituted to have government, employer and employee members; that the government member be the chairman and that a quorum be three members, one from each of the representative parties. Alternates should be named to act as required. A medical expert, acting in an advisory capacity, should also be a Board member but non-voting.

We strongly recommend that when appointments are made to the Board, it should be constituted so that it is distinctly either partisan or non-partisan.

Debates in the House have included suggestions that The Workmen's Compensation Board should report directly to the House. We are opposed to any such proposal.

However, since the Board exercises powers of trusteeship and judicial authority under the Act, it would seem to be logical that close association with the legal branch of the Government is desirable. This Association, therefore, recommends that the Board report to the Attorney General of the Province.

Legislation and Regulations

The Workmen's Compensation Act has been in existence for more than half a century. During this period it has been amended a number of times but, basically there has been no change other than to adjust to existing social conditions. It is to be expected that this should and would be done. It is also to be expected that this Act, which has been in effect for so long and has frequently been model legislation for other jurisdictions, should not require drastic or immediate remedial amendment. Perhaps this is the reason that the Act has only been the subject of inquiry at seventeen year intervals.

This Association believes that rather than having a formal and infrequent review of the Act with relatively frequent interim amendments, it would be preferable to have more frequent formal reviews with necessary amendments made only after such a review. We suggest this review period should be five years and conducted in the same manner as this review, by a Judicial Commissioner.

Under this proposal both employees and employers would have equal rights and equal opportunities to submit critical and constructive views on the provisions and operation of the Act. They would also have the assurance that the Act would not be changed for a definite period, coupled with the knowledge that it would be reviewed at a definite time.

The Act provides that the Board may make such regulations as are necessary to carry out the provisions of the Act. We do not question the need for this authority, but we do suggest that the interests of both employee and employer would be better served if the proposed changes in regulations were submitted to representatives of employee and employer for comment, before the regulations were implemented.

We make this suggestion in the belief that both employee and employer are well aware of the need for a good and effective Workmen's Compensation Act - an Act with provisions that respect and recognize the interests of affected persons and parties.

Safety Associations

The authority for the formation of a safety association is provided in Section 117 of the Act. The Mines Accident Prevention Association of Ontario is the safety association for those employers in Class 5, and has been covered by the provisions of the Act since 1947. Prior to that time there was a similar type of organization known as Class 5 Accident Prevention Association which was incorporated in 1930.

The Mines Accident Prevention Association of Ontario has a Board of thirteen directors elected from the membership at each annual meeting. The directors are all men of broad mining experience who hold responsible positions with the industry and who meet regularly on the affairs of their Association. With the exception of the Executive Director they receive no monetary benefit from the position of director.

The Ontario Mining Association and the Mines Accident Prevention Association of Ontario have worked co-operatively to reduce the incidence of accidents and their activities have been complementary. The Mines Accident Prevention Association of Ontario conducts active education and training programs at the supervisory level and this knowledge is applied in operations as an integral part of the work assignments, or in the planning and development of mining facilities.

The work of the Mines Accident Prevention Association of Ontario, in co-operation with Ontario Mining Association, is directed toward the fields of promotion of safety and of elimination of conditions which create industrial disease.

The industry has made considerable progress in both fields, particularly in the development of means and techniques for the elimination and control of conditions which create silicosis.

The Ontario Mining Association is of the opinion that its relationship with the Mines Accident Prevention Association of Ontario has been both constructive and effective and that these accomplishments have been due in no small degree to the calibre of the men who have served as directors of the Mines Accident Prevention Association of Ontario.

We urge that action should be avoided that would tend to reduce the autonomy, the authority, or the responsibility of the directorate of the Mines Accident Prevention Association of Ontario.

Appeal Procedure

In addition to the preceding comments which have all related to specific provision in the Act, we would also comment on the procedures for the adjudication of claims.

Our view is that the basis for adjudication must centre on medical evidence if only because a claim must be related to physical disability or impairment. While we concede that the medical aspect is highly technical and very specialized, we do not suggest that a doctor should have to make the critical decision as to the award. However, we do maintain that any decision as to an award must be compatible with the medical evidence relative to the situation.

The four levels of adjudication, namely, the claims level, the review committee, the appeal tribunal and the board hearing, are logical and organizationally necessary because of the large number of claims which must be processed - about 1000 per day.

We suggest that a primary consideration for appealing a decision of the review committee should be the submission of new evidence bearing on the decision of the review committee. This evidence should be submitted first to the review committee for consideration and if it decides that it is not competent to make a decision, it must refer the matter to the appeal tribunal. A similar procedure should be followed for appealing a decision of the tribunal.

Unless a procedure such as this is adopted we believe that the effectiveness of The Workmen's Compensation Board organization will be reduced, and greater pressures will be developed to have the decisions of the Board subject to review by the courts of law. Neither of these conditions is desirable to either the employees or the employers as a whole.

We recommend that tribunal hearings should be conducted in the same manner as an inquest, with a competent lawyer acting in a capacity similar to that of the Crown Attorney at an inquest, organizing the presentation of pertinent information. We believe that such a change would avoid creating the conditions that pit the employer against the employee to the detriment of good employer-employee relations.

All of which is respectfully submitted.

C. P. Girdwood,
President.

V-P James L. G. R.
James L. G. R.

